Supreme Court, U.S.
FILED
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CLERK

No. 97-1343

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

MR. AND MRS. SCOTT LAWVERE,

Petitioners,

v.

THE EAST LYCOMING SCHOOL DISTRICT;
PENNSYLVANIA STATE CONSTABLES;
ROBIN SCHULLER, Principal;
J. HOWARD LANGDON, Attorney;
C. ROGER McRAE, District Magistrate,
all in their official and individual capacities;
LARRY PETERMAN, Office of Constable,
Schrewberry Township;
STEVEN LITZELMAN, Office of Constable,
Jersey Shore Borough;
GURN WEBER, Office of Constable,
Old Lycoming Township,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF FOR RESPONDENTS EAST LYCOMING SCHOOL DISTRICT AND ROBIN SCHULLER IN OPPOSITION

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85 pp

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COUNTERSTATEMENT OF QUESTIONS PRESENTED FOR REVIEW

1. Whether the United States Court of Appeals, Third Circuit, properly utilized and applied the relevant law on §1983 municipal liability in accordance with *Monell v. Dept. of Social Services*, 436 U.S. 658 (1978), and in so doing, properly affirmed the District Court's Order granting Respondents' Motion for Summary Judgment?

2. Whether the United States Court of Appeals, Third Circuit, properly affirmed the District Court's Order granting Respondents' Motion for Summary Judgment and in so doing properly applied the Doctrine of Qualified immunity?

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STATEMENT OF JURISDICTION

Petitioners have failed to comply with Supreme Court Rule 13(3) wherein the 90 day period in which a party may file a Petition for a Writ of Certiorari, ". . . runs from the date of entry of the . . . order sought to be reviewed and not from the issuance date . . ."

The Court of Appeals Order is dated November 14, 1997. (Pet. for Writ, pp. 14-15). There is no other date noted on the Order. Providing the 90 days begins to run from the date of entry of an Order, as indicated in Supreme Court Rule 13(3), the Lawveres' Petition was filed on the 91st day after the entry of the Order (February 12, 1998). Accordingly, the Petition is untimely.

There appears to be a discrepancy between Supreme Court Rule 13(1) and 13(3), where Rule 13(1) states that a petition is timely when it is filed, ". . . within 90 days after entry of the judgment." The same language appears in 28 U.S.C. §2101(c) which indicates a writ shall be, ". . . applied for within 90 days after the entry of . . . judgment." Nonetheless, reading Rule 13 sections (1) and (3) together would seem that section (3) governs section (1), in that section (3) deals specifically with the "time to file a petition. . ." In sum, a Writ of Certiorari should not issue for the foregoing reasons.

Additionally, a Petition for Rehearing can toll the 90 day filing period, unless it is a Petition for Rehearing en banc. Supreme Court Rule 13(3). Petitioners have conceded that the Petition for Rehearing below was treated as a Petition for Rehearing en banc and, as such, the 90 day filing period was not tolled. (Pet. for Writ, p. 1). The Court of Appeals Order denying the Lawveres' Motion was entered on December 22, 1997.

Alternatively, should this Honorable Court deem the Lawveres' untimely filing harmless, a review of the United States Court of Appeals' decision is appropriate pursuant to 28 U.S.C. §1254(1) and upon this Honorable Court's discretion in accordance with Supreme Court Rule 10.

COUNTER-STATEMENT OF THE CASE

Plaintiffs/Petitioners, Scott and Brenda Lawvere[1], asserted that their federally protected rights were violated by the East Lycoming School District[2] and Robin Schuller[3], through their efforts in their actions to compel compliance with the Pennsylvania Compulsory School Attendance Statute. The District Court, Senior Judge Muir granted ELSD and Robin Schuller's Motion for Summary Judgment by Order dated January 29, 1997.

On September 17, 1994, Plaintiffs, Scott and Brenda Lawvere received a letter[4] from Defendant, Robin Schuller informing them that they were in violation of the Pennsylvania Compulsory School Attendance Statute.[5] Schuller and the Lawveres met to discuss home schooling possibilities. When the Lawveres failed to comply with the Statute by filing home schooling papers or enrolling their children in the school district, *Id.*,

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[1] Hereinafter referred to as the Lawveres.

[2] Hereinafter referred to as ELSD.

[3] At the time of the incident, which forms the basis of their claim, Robin Schuller was a Principal at an elementary school within the East Lycoming School District.

[4] A true and correct copy of Schuller's letter is attached hereto as Appendix A.

[5] A true and correct copy of the Lawvere's Complaint is attached hereto as Appendix B, p. 7a.

Schuller called them on October 4, 1994, warning that they were subject to criminal charges if they did not file an enrollment certificate with the School District by October 6, 1994. (Appendix B, p. 7a). Following their failure to file the certificate, Schuller signed a criminal complaint[6] against the Lawveres alleging violation of Section 1327 of the School Code of 1949, 24 Pa. C.S. §§1-101 *et seq.*

The Lawveres entered a not guilty plea (Appendix B, p. 8a), and a hearing was held before District Magistrate C. Roger McRae on December 5, 1994. The Magistrate found them guilty and levied fines.

On or about September 8, 1995, the Lawveres, proceeding *pro se,* commenced this civil rights action pursuant to 42 U.S.C. §1983 by filing a Complaint. The Lawveres argued that the School District and Schuller violated their First Amendment rights by bringing a criminal action against them for violation of the Compulsory School Attendance Law, 24 Pa. C.S. §13-1327. (Appendix B, pp. 12a-13a). They further maintained that Schuller and the School District violated their due process rights by failing to serve them with process in the filing of the private Criminal Complaint and by failing to comply with Pennsylvania's "right to know" law. (Appendix B, p. 12a-13a). Schuller and the School District filed an Answer on October 12, 1995. Schuller and the School District moved for Summary Judgment on or about May 31, 1996.[7] Thereafter, on June 20, 1996, the Law-

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[6] A true and correct copy of the criminal complaint is attached hereto as Appendix C.

[7] A true and correct copy of Defendants' Motion for Summary Judgment and attendant Brief is attached hereto as Appendix D.

veres filed an Answer to Defendants' Motion for Summary Judgment.[8] On August 1, 1996, the Lawveres filed their own Motion for Summary Judgment. On August 15, 1996, ELSD and Robin Schuller filed a Response in Opposition to the Lawveres' Motion for Summary Judgment along with a supporting Brief.

Summary Judgment was granted on behalf of the School District on the basis that there was a complete lack of evidence with respect to whether the actions for which the Lawveres complained were carried out pursuant to a policy or custom of the District.[9] The Court went on to hold that Schuller was entitled to Summary Judgment in that there was a complete lack of evidence that her actions deviated in any way from the requirements of the Pennsylvania School Code, and that the Lawveres' remaining allegations involved alleged violations of State law which are not actionable in an action pursuant to 42 U.S.C. §1983.

On February 13, 1997, the Lawveres filed a "Motion for Rehearing" of the District Court's Order of January 29, 1997. On February 24, 1997, ELSD and Robin Schuller, among others, filed a Brief in Opposition to the Lawveres' Motion. The Lawveres filed a Motion to Strike ELSD's and Robin Schuller's Brief in Opposition. On March 18, 1997, the Lawveres filed a Reply Brief with respect to their Motion for Rehearing. The District Court

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[8] A true and correct copy of the Lawveres' Answer/Objection to Defendants' Motion for Summary Judgment and their Brief in Support thereof is attached hereto as Appendix E.

[9] A copy of the United States District Court's Order of January 29, 1997 is contained in the Lawveres' Petition for a Writ of Certiorari, Appendix, pp. 1-8, see p. 7.

treated the Lawveres' Motion for Rehearing as a Motion for Reconsideration under Fed.R.Civ.P. 60(b).[10]

Ultimately, the District Court denied the Lawveres' Motion for Reconsideration finding that their Motion was simply a restatement of their arguments previously set forth in their Brief in Opposition to ELSD's and Schuller's Motion for Summary Judgment. (Appendix F, pp. 62a-63a). The District Court also noted that, "we have thoroughly reviewed our Order of January 29, 1997, and we are convinced that we did not make an error of law." *Id.*

On April 16, 1997, the Lawveres filed a Notice of Appeal with the United States District Court for the Middle District of Pennsylvania. Subsequently, the Lawveres filed an Appellate Brief challenging the propriety of the District Court's Order. ELSD and Robin Schuller timely filed their Brief in Opposition, maintaining the integrity of the District Court Order. A Reply Brief was filed in response thereto. After consideration of the issues raised by Appellants, the Lawveres, the United States Court of Appeals for the Third Circuit affirmed the District Court's Order of March 19, 1997 in an Order entered on November 14, 1997.[11] Thereafter, the Lawveres filed a Petition for Rehearing. This Petition was treated as a Petition for Rehearing en banc.[12] On December 22,

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[10] A true and correct copy of the United States District Court's Order of March 19, 1997 is attached hereto as Appendix F. The procedural history outlined above is set out in detail in the District Court's Order.

[11] A copy of the United States Court of Appeals, Third Circuit, Order of November 14, 1997 is contained in the Lawveres' Petition for a Writ of Certiorari, pp. 14-15.

[12] A copy of the United States Court of Appeals, Third Circuit, Order of December 22, 1997 is contained in the Appendix of the Lawveres' Petition for a Writ of Certiorari, p. 9.

1997, the Court of Appeals denied Appellants' Petition for Rehearing. *Id.*

On February 12, 1998, the Lawveres filed, via United States Mail, a Petition for a Writ of Certiorari with this Honorable Court.

ARGUMENT

Petitioners, Scott and Brenda Lawvere, maintain that the Court of Appeals erred in affirming the District Court's Order granting East Lycoming School District's and Robin Schuller's Motion for Summary Judgment. Apparently, the Lawveres contend a Writ of Certiorari should issue in this case because the District Court, and the Court of Appeals in its review, somehow misapplied the standards articulated in *Monell v. Dept. of Social Services,* 436 U.S. 658 (1978), regarding the liability of municipal entities and public officials under 42 U.S.C. §1983. Petitioners further contend that the Court of Appeals' ruling purportedly conflicts with certain decisions of the other United States Court of Appeals. Essentially, the District Court found, and the Appellate Court affirmed, that the Lawveres failed to offer any evidence which would establish, ". . . that the actions of the School District were carried out pursuant to an unconstitutional policy or custom . . ." (*See* Petitioners' Appendix, p. 7).

The United States Court of Appeals, Third Circuit, properly affirmed the District Court's ruling where there was no genuine issue of material fact in dispute and the law regarding municipal liability was appropriately applied pursuant to this Court's dictates in *Monell, supra,* and its progeny. Additionally, the Court of Appeals' ruling does not conflict with the cited deci-

sions of other Circuits, as argued by the Lawveres. As such, a Writ of Certiorari should not issue in the instant case.

A. Summary Judgment Standard.

Summary Judgment is proper where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). However, "(t)he mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). A genuine issue of material fact arises only if a reasonable jury could find for the non-moving party on that fact. *Id.* at 248. The non-movant is not given the benefit of every inference or possibility, but only of every reasonable inference. *Spence v. Zimmerman*, 873 F.2d 256, 257 (11th Cir. 1989). The non-moving party must offer sufficient evidence such that a reasonable jury could return a verdict in favor of that party. *Anderson*, 477 U.S. at 248. "If the evidence is merely colorable or is not significantly probative, summary judgment may be granted." *Id.* at 250-251. (Citations omitted). Rule 56(c) mandates the entry of Summary Judgment against a party who fails to produce evidence sufficient to establish an essential element of its case, on which he will bear the burden of proof at trial. *Celotex v. Catrett*, 477 U.S. 317, 322 (1986).

B. The Record Is Devoid Of Any Evidence That A Policy Or Custom Of The School District Resulted In A Constitutional Violation.

The District Court correctly held and the Court of Appeals properly affirmed that the Lawveres are not entitled to relief under 42 U.S.C. §1983 against the School District. It is axiomatic that there is no respondeat superior liability under §1983. *Rizzo v. Goode*, 423 U.S. 362, 377 (1978). Rather, as this Court held in *Monell, supra*, it is only "when execution of the government's policy or custom . . . inflicts the injury that the government as an entity is responsible under the §1983." *Monell*, 436 U.S. at 694. As this Court recently stated:

> Locating a "policy" ensures that a municipality is held liable only for those deprivations resulting from the decision of its duly constituted legislative body or of those officials whose acts may fairly be said to be those of the municipality as well. Similarly, an act performed pursuant to a "custom" that has not been formally approved by an appropriate decision maker may fairly subject a municipality to liability on the theory that the relevant practice is so widespread as to have the force of law.

Board of the County Commissioners of Bryan County, Oklahoma v. Jill Brown, ___ U.S. ___, ___, 117 S.Ct. 1382, 1388 (1997) (citations omitted).

A complainant must also establish that the municipal action was taken with a reckless degree of culpability and a direct causal link between the municipal action and the deprivation of federal rights. *Id.* In *City of Los Angeles v. Heller*, 475 U.S. 796 (1986), this Court held that a municipal entity cannot be held liable for a civil rights violation where there is no underlying constitutional violation by the individual officer.

In their Complaint the Lawveres did not allege that the School District had a policy or custom of unconstitutional conduct. Furthermore, the Petitioners failed to offer any such evidence in their Motion for Partial Summary Judgment, in their Response to Defendants' Motion for Summary Judgment, in their Motion for Rehearing or in their Third Circuit Appellate Brief. Clearly, the record contains no evidence from which such an inference could be drawn. Moreover, there was no underlying constitutional violation by the individual Defendant, Robin Schuller. (*See* Argument below and District Court's Order, 1/29/97). Based on the Lawveres' failure to cite any evidence that the actions of the School District were carried out pursuant to an unconstitutional policy or custom, and because the District Court itself was not aware of any unconstitutional policy or custom, the District Court granted, and the Appellate Court affirmed, Defendants' Motion for Summary Judgment as to all of the Lawveres' claims against the School District.

In their Petition for a Writ of Certiorari, the Lawveres maintain that this Honorable Court should grant their Petition pursuant to Supreme Court Rule 10(a) which provides that a Writ of Certiorari may be appropriate where, "a United States Court of Appeals has entered a decision in conflict with the decision of another United States Court of Appeals on the same important matter." The Lawveres cite several decisions in support of this proposition in subsections 1 and 3 of the Argument portion of their Petition for a Writ of Certiorari. (*See* Lawveres' Petition for Cert., pp. 7-8). It is unclear whether Petitioners maintain that the Third Circuit misapplied the *Monell, supra,* decision or that the *Monell* decision, in fact, conflicts with the decisions of other United States Courts of Appeals with regard to §1983 municipal lia-

bility. In either case, as discussed below, the Lawveres' reliance on the below cited cases is misplaced and inappropriate. The Court of Appeals' ruling properly affirmed the District Court's use and application of the law regarding municipal liability in a §1983 action, pursuant to this Court's dictates in *Monell.*

Initially, the Lawveres rely on *D.L. Auld Company v. Chroma Graphics Corp.*, 714 F.2d 1144 (F. Cir. 1983), in support of the proposition that the Third Circuit somehow misapplied the relevant law regarding municipal liability. The Petitioners' reliance is misplaced. In that summary judgment case, the issue was whether a patent was, in fact, valid. The Appellate Court there reviewed the appropriate law regarding summary judgment and affirmed the District Court's finding that there was no genuine issue of material fact with regard to the patent's validity. That Court did not resolve issues of material fact. Likewise, in this case, the Appellate Court determined that there was no genuine issue of material fact for the jury to resolve since the Lawveres failed to offer any evidence of an unconstitutional policy or custom. Clearly, there exists no conflict between the decision in the *D.L. Auld* case and the Third Circuit's ruling in the instant case.

Petitioners next rely on *Bowen v. Watkins,* 699 F.2d 979 (1982). (Cite incorrect as provided by Petitioners). They also report the appropriate citation to this case as *Bowen v. Watkins,* 499 F.2d 979 (1982). However, neither citation to this case is correct. The Respondents unfortunately are unable to locate the correct citation and, as such, are not able to determine how, in fact, it may conflict with the Third Circuit's ruling in this case.

The Lawveres' reliance on *Turpin v. Mailet,* 619 F.2d 196 (2d Cir. 1980) is likewise misplaced. In that case, the issue was whether an "official policy" could be inferred from informal acts or omissions of certain municipal officials and whether that plaintiff's evidence was sufficient to prove any official municipal policy with respect to the arrest on which the suit was based. After a detailed discussion of *Monell* and municipal liability, the Court of Appeals for the Second Circuit determined that the plaintiff in that case failed to establish that the defendant's arrest of plaintiff was made pursuant to any official policy on the part of the municipality there. The *Turpin* case evidences no conflict with the Third Circuit's ruling in this case, based on the Second Circuit's detailed discussion and understanding of *Monell* and its progeny and its determination that proof of an official policy was a prerequisite to a finding of liability in that case.

In addition, the Lawveres wrongly rely on *Kite v. Kelley,* 546 F.2d 334 (10th Cir. 1976). That case involved the application of the Civil Rights Act of 1871. In that case, there was no declaration of a wrongful policy. Additionally, *Kite v. Kelley* predates *Monell* and, as such, the Third Circuit's application of *Monell* in the instant case cannot conceivably conflict with the *Kite* decision.

Lastly, the Petitioners rely on *Environmental Defense Fund v. Marsh,* 651 F.2d 983 (5th Cir. 1981). Again, their reliance is misplaced. The Lawveres apparently cite this case in support of the proposition that the District Court allegedly wrongly resolved issues of material fact. (Pet. for Writ, pp. 8-9). In *Environmental Defense Fund,* that Court correctly recited the law regarding the Standard of Review in Summary Judgment Motions. Partic-

ularly, that Court noted that "the District Court should base its decision on . . . any relevant evidence offered by the parties that would be admissible at trial." *Environmental,* 651 F.2d at 991. That case in no way conflicts with the Summary Judgment Standards applied by the District Court in its initial review of Defendants' Summary Judgment Motion as evidenced in the District Court's opinion. (Petitioners' Appendix, pp. 5-6). In ruling on the propriety of the District Court's Order, the Court of Appeals for the Third Circuit certainly utilized the appropriate summary judgment law and effectively affirmed the District Court's analysis of the same. Accordingly, the Lawveres again have failed to establish any conflict between the Third Circuit's ruling and that of other Circuits.

In conclusion, the Lawveres' repeated failure to identify or to offer any relevant evidence that the School District acted pursuant to an unconstitutional policy or custom renders the Respondents' Motion for Summary Judgment appropriate. The United States District Court and the United States Court of Appeals for the Third Circuit properly recited and applied the relevant case law with regard to both Summary Judgment and municipal liability in a Section 1983 action. There exists no conflict between this Court of Appeals' decision in the instant case and the decisions, as cited by Petitioners, of other United States Courts of Appeals. (*See* Supreme Court Rules, Rule 10(a). Petitioners cannot even contend that there was an erroneous factual finding where there was absolutely no evidence offered regarding a wrongful policy or custom. Indeed, the District Court itself was aware of no unconstitutional policy or custom. (Petitioners' Appendix, p. 7). Finally, Petitioners have failed to establish how, in fact, any properly stated rule of law was misapplied.

Accordingly, the East Lycoming School District and Robin Schuller, Respondents, here respectfully request that this Honorable Court deny the Lawveres' Petition for a Writ of Certiorari, thereby affirming the Court of Appeals' Order granting Respondents' Motion for Summary Judgment.

C. The District Court Properly Applied The Concept of Qualified Immunity And Respondent, Robin Schuller Is Entitled To Qualified Immunity.

In their Petition for a Writ of Certiorari, in subsection 4 of Argument, the Lawveres contend that the District Court erred in applying the Doctrine of Qualified Immunity to the Defendants in that they allegedly acted under color of state law and violated Plaintiffs' substantive rights. Further, Petitioners assert that the District Court, and in turn, the Court of Appeals, failed to appropriately apply the "Doctrine of Immunity" by failing to consider, ". . . whether the named defendants were duly pursuing the duties under State statute without violating Plaintiffs' rights." (*See* Pet. for Writ, p. 10). Purportedly, the District Court and the Court of Appeals acted in contravention to the decision in *Allred v. Svarczkopf,* 573 F.2d 1146 (10th Cir. 1978). That case, however, predates the decisions of the Supreme Court stated below and, as such, is no longer relevant with regard to the objective versus subjective good faith criteria.

This Court held, in *Harlow v. Fitzgerald,* 457 U.S. 800, 818 (1982), that "government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."

In *Anderson v. Creighton*, 483 U.S. 635, 640 (1987), this Court explained that to defeat immunity, it is not sufficient that the right at issue be clearly established as a general matter. The question is whether a reasonable official could have believed his conduct was lawful in light of clearly established law and the information the official possessed. 483 U.S. at 641. Qualified immunity protects all but the plainly incompetent or those who knowingly violate the law. *Malley v. Briggs*, 475 U.S. 335, 341 (1986).

The Court of Appeals for the Third Circuit interpreted the *Anderson* standard in *Brown v. Grabowski*, 922 F.2d 1097, 1111 (3rd Cir. 1990), *cert. denied*, 501 U.S. 1218 (1991) to require the Court to examine the specific conduct of each defendant claiming qualified immunity. Following that Rule in *Grant v. City of Pittsburgh*, 98 F.3d 116, 122 (3rd Cir. 1996), the Court instructed the trial court to carefully examine the record to establish, for purposes of summary judgment, a detailed factual description of the actions of each individual Defendant.

The District Court held that, since the provisions of the Pennsylvania School Code did not violate the First Amendment and because the Lawveres failed to offer any evidence that Robin Schuller's actions in any way deviated from the School Code, Summary Judgment was appropriate. The District Court further found that Robin Schuller was not liable with regard to the Lawveres' claims of "right to public information".

Based on the foregoing findings, the District Court never reached the issue of whether Principal Robin Schuller was entitled to qualified immunity. However, it is clear from the facts demonstrated on the record that Robin Schuller acted in compliance with her duty as a principal under the Pennsylvania School Code, and

particularly with respect to attempts to seek compliance with the Compulsory School Attendance Statute. She, therefore, is entitled to a finding of qualified immunity.[13]

CONCLUSION

For all the foregoing reasons, Respondents East Lycoming School District and Robin Schuller respectfully request that this Honorable Court deny the Lawveres' Petition for a Writ of Certiorari, thereby affirming the Court of Appeals' Order granting Respondents' Motion for Summary Judgment.

Respectfully submitted,

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Attorney for Respondents.

March 20, 1998

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[13]The Lawveres also claim that they were not permitted to complete discovery. First, this is factually incorrect. For instance, they make much of the failure of the Superintendent to appear at his deposition in the date noted. They fail to note, however, that his deposition was taken. Also, Rule 56(f) requires Plaintiffs to file an affidavit indicating what additional information is needed. This was not done.

APPENDIX A

EAST LYCOMING ELEMENTARY SCHOOLS
Renn Elementary School
Route #118
Lairdsville, PA 17742

Robin Schuller, Principal

September 15, 1994

Mr. and Mrs. Scott Lawvere
P.O. Box 46
Unityville, PA 17774

Dear Mr. and Mrs. Lawvere,

It has come to the East Lycoming School District's attention that you have three school aged children who are subject to the compulsory attendance provisions of the Public School Code of Pennsylvania. We understand that you currently reside in the district; however, our records show that your children are not currently registered in our schools.

We have an obligation, under the School Code, to be accountable for all district resident students. You must immediately enroll your children in the East Lycoming School District, and they must begin to attend school, or you must meet the State Board of Education adopted regulations settings forth the requirements for home instruction.

If you fail to immediately meet one of the two aforementioned requirements, this matter will be referred to the Magistrate without further notice from the school administration.

If you have any questions, please call me at 584 - 3070 between the hours of 8:00 a.m. and 4:00 p.m.

Sincerely,

/s/ Mrs. Robin Schuller
Mrs. Robin Schuller
Elementary Principal

pc: Mr. Edward Harrington, Superintendent of Schools

APPENDIX B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

Case Number: 4: CV-95-1515

Scott and Brenda Lawvere

Plaintiffs

v.

J. Howard Langdon, Attorney at Law
District Magistrate C. Roger McRae
Robin Schuller, Principal
in their individual and official capacities,
the Pennsylvania State Constables, and
the East Lycoming School District

Defendant

SUMMONS IN A CIVIL ACTION

TO:

See Complaint
J. Howard Langdon, Attorney at Law,
in his individual capacity
R. R. #1
Muncy, Pa. 17756

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon Plaintiffs

Scott & Brenda Lawvere
P.O. Box 46
Unityville, Pa. 17774

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons

upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

/s/ Mary E. D'Andrea
Clerk

September 8, 1995
Date

/s/ B. Forest
By Deputy Clerk

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

Case Number 4:CV-95-1515

TRIAL JURY DEMANDED

Mr. & Mrs. Scott Lawvere

Plaintiffs

vs.

The East Lycoming School District and
The Pennsylvania State Constables
Robin Schuller, Principal
J. Howard Langdon, Attorney
and C. Roger McRae, District Magistrate
in their official and individual capacities

Defendants

COMPLAINT

COMES NOW, Plaintiffs Scott and Brenda Lawvere file their complaint against Defendants the East Lycoming School District, and the Pennsylvania State Constables; Robin Schuller, Principal for the East Lycoming School District, J. Howard Langdon, attorney for the East Lycoming School District, and District Magistrate C. Roger McRae, in their official and individual capacities, for willfully and intentionally violating Plaintiffs' rights secured by the Constitution and Bill of Rights, under the color of State law, custom, and usage, for depriving said rights and for failure, neglect, or refusal to protect Plaintiffs from said deprivation though it was within the power of Defendants to do so.

Plaintiffs' Affidavit in Support of their Complaint is incorporated and attached hereunto.

JURISDICTION

(1) This court has jurisdiction under Article III, §II of the Constitution for the United States and under 28 USC § 1331 and § 1343 (a.); it also has jurisdiction under 42 USC § 1983, and the Civil Rights Act of 1871.

(2) This action arises due to the defendants' violation of Plaintiffs' unalienable rights in the nature of Article I, Article IV, Article V, Article VI, Article XIII, and Article XIV of the Bill of Rights; the Civil Rights Act of 1871; 42 USC § 1983; and 28 USC § 1331, § 1343(a).

(3) The Plaintiffs believe and allege that at all times mentioned herein, Defendants were and/or are officers/employees of the Commonwealth of Pennsylvania and/or its' agencies. As to all acts alleged herein, all Defendants were/are public officers or agents of the Commonwealth of Pennsylvania and at all times were acting under color of law.

(4) The Plaintiffs reserve their right to amend this complaint, and add the names of other Defendants as their identities become known but which are unknown at this time. Plaintiffs demand and reserve their right to Trial by Jury of their Peers pursuant to Article VII of the Bill of Rights.

(5) This action arises for damages arising due to insidious acts of agents/employees of the Commonwealth of Pennsylvania and any other unknown individuals as their identities become known, who are being sued in their individual as well as their official capacities including but not limited to: violation of Plaintiffs' right of Freedom of Religion secured by the First Amendment; violation of Plaintiffs' rights to access of

information secured by the First Amendment; violation of Plaintiffs' rights to access the court, to due process of law and equal protection under the law secured by the Fifth and Fourteenth Amendment; violation of Plaintiffs' rights to be free from abuse of process, malicious prosecution, harassment, threats, intimidation and coercion secured by the Fourth, Fifth, Eighth, Thirteenth, and Fourteenth Amendments; and violation of Plaintiffs' rights to Trial by Jury in a quasi-criminal action as secured by the Fifth and Sixth Amendments to the Constitution.

Statement of the Case

(6) On or about 17 Sep 94, Plaintiffs received a letter from Robin Schuller, Principal in the East Lycoming School District (hereinafter known as E.L.S.D.), Renn Elementary School, alleging that they were not in compliance with the compulsory attendance provisions of the Public School Code of Pennsylvania. After meeting with Principal Schuller on or about 23 Sep 94 and School Superintendent Edward Harrington on or about 26 Sep 94, plaintiffs sent requests under Pennsylvania's Law s. 390, "Right to Know" and demanded copies of statutes, implemented and promulgated rules and regulations concerning education in the home. To date the E.L.S.D. nor its' agents/employees answered said requests; therefore it can only be presumed that such statutes, rules, or regulations do not exist.

(7) On or about 04 Oct 94, Principal Schuller called to inform Plaintiffs that criminal charges would be filed against them if they failed to file an enrollment affidavit with the E.L.S.D. by 06 Oct 94. Plaintiffs repeatedly requested written information pursuant to Pennsylvania's "Right to Know" Law, but Schuller responded that Plain-

tiffs would not receive any written response. On or about 06 Oct 94, Principal Schuller filed a private criminal complaint with Magisterial District 29-3-03, Muncy, Pa., District Magistrate C. Roger McRae (hereinafter called McRae) presiding.

(8) On or about 06 Oct 94, C. Roger McRae issued a Warrant of Arrest against Plaintiffs without issuing a summons or serving a complaint.

(9) On or about 15 Oct 94 a letter from the Pa. State Constable arrived, stating that plaintiffs had to report by Oct 19 to the District Magistrate's under threat of arrest.

(10) On or about 18 Oct 94 Plaintiffs went to the District Magistrates' office to examine and copy documents in the file, which contained the original summons papers with all copies attached. On or about 19 Oct 94 plaintiffs appeared at District Magistrates' Office to avoid arrest. McRae was not in chambers at the time Plaintiffs' appeared to answer, and his Clerk refused to accept Plaintiffs' plea of "Non-assumpsit", insisting that the only plea Plaintiffs' could enter was "guilty or not guilty". Plaintiffs were forced to plea "Not guilty" under threat, duress, and coercion, and said clerk assigned a hearing and noticed Plaintiffs.

(11) On or about 19 Oct 94 a "Petition for Removal" and "Motion to Dismiss" were mailed to J. Howard Langdon, attorney for E.L.S.D. (hereinafter called Langdon), and on or about 01 Nov 94 and 10 Nov 94, to McRae, in which the Plaintiffs objected to the use of a magistrate in an administrative action, and to request that this action be dismissed due to the fact that the Plaintiffs were not served written notice of violation pursuant to Title 24 § 13-1333; were never duly served process; were refused information by the E.L.S.D.; and that Plaintiffs' private

attorney, Langdon, was also representing E.L.S.D., a conflict of interest and fiduciary responsibility.

(12) On or about 05 Dec 94, Plaintiffs served interrogatories upon Defendant E.L.S.D. by and through its' attorney, pursuant to Pennsylvania Rules of Court for Discovery. Defendant E.L.S.D. refused to answer said interrogatories; in fact, Langdon stated that "the rules of civil procedure do not provide for discovery"

(13) On or about 05 Dec 94, the Plaintiffs attended a hearing at the District Magistrates office. McRae denied Plaintiffs' "Petition for Removal", "Motion to Dismiss", and "Motion for Enlargement of Time" without reason. McRae proceeded to trial over and above Plaintiffs' objections; Langdon used the court to conduct a discovery hearing. Plaintiffs attempted to present their arguments in defense, but were found "guilty" by McRae. Plaintiffs were never afforded their right to Trial by Jury demanded as a matter of right.

(14) On or about 29 Dec 94, Plaintiffs sent a Notice and Demand to the District Magistrate requesting: a final order and/or judgement from the 05 Dec 94 hearing; production of any signed return receipt verifying Plaintiffs received proper service; and access to their court file and docket NT -0619-94 and NT-0620-94, which had been denied them. Said documents were never provided and Plaintiffs are denied access to their court file and docket to date.

(15) On or about 04 Jan 95, Plaintiffs received a letter from J. Howard Langdon defending the position of the District Magistrate, C. Roger McRae, and advising us what we should do. Plaintiffs responded on or about 06 Jan 95 with a Judicial Notice sent to C. Roger McRae & J. Howard Langdon stating that due to the acts of E.L.S.D. and

its' employees/agents as well as those of Magistrate McRae, Plaintiffs were denied access to information and the courts; denied equal protection and due process of law; denied a fair hearing and trial, thereby prejudicing their case since Langdon not only represented E.L.S.D., but had also represented the Plaintiffs and their church; Defendants E.L.S.D, McRae, and Langdon violated Plaintiffs' rights and caused them irreparable harm since they did not and could not violate Pennsylvania Education statutes and implemented/promulgated rules and regulations.

Said Defendants were noticed of their unlawful conduct and forewarned that any further acts would be considered willful, and intentional acts of maliciousness against the Plaintiffs.

(16) On or about 11 Jan 95 Plaintiffs received a letter from J. Howard Langdon noting they did not appeal and threatening several dire legal consequences if Plaintiffs did not follow his directions.

(17) On or about 18 Jan 95 notice of indigency hearing arrived by regular mail, scheduling a hearing for 10 Feb 95, at which Plaintiffs appeared specially, and said that they could not pay the fine since they were not guilty. McRae cancelled the Hearing and scheduled another for March, which Plaintiffs could not attend. On or about 15 Mar 95 Magistrate McRae sent a letter to reschedule an Indigency Hearing.

(18) On or about 03 Apr 95, Plaintiffs sent an unsworn declaration to the District Magistrate declaring that they could not afford to pay any fines, fees, or costs.

(19) On or about 19 May 95, Pennsylvania State Constables arrived at Plaintiffs house to arrest Plaintiff Scott Lawvere, on the pretext that Plaintiff had made threatening statements to District Magistrate C. Roger McRae.

Several Constables, armed with deadly force, surrounded Plaintiffs house while Plaintiff Brenda Lawvere answered the door and explained that Plaintiff Scott Lawvere was not at home, but rather was at work. She further explained that Mr. Lawvere has never threatened anyone, and being a God fearing individual would never perform such an unconscionable act.

While in conversation with the Constables, one of them raised a loaded shotgun toward the Plaintiff as if to shoot, threatening the life and safety of the Plaintiff. When the Constables did not find Plaintiff Scott Lawvere at home, they proceeded to his place of employment where they took him into custody and transported him to District Magistrate McDermott.

At the Magistrate's office Plaintiff learned that McRae had issued a Warrant of Arrest for failure to appear at an Indigency Hearing, but no Warrant of Arrest was issued for allegedly threatening McRae. Magistrate McDermott forced Plaintiff to pay collateral, or go to jail. A hearing date had been prearranged for 22 May 95 at Magistrate McRae's office.

(20) At the Indigency hearing on or about 22 May 95, Magistrate C. Roger McRae explained that he wanted money from the Plaintiffs for fines that he had levied at the original hearing of 05 Dec 94, and demanded that the fines be paid or Plaintiff would be thrown in jail. When trying to explain that such demands amounted to Peonage, McRae demanded payment of fines under threat of arrest. Plaintiffs Scott Lawvere asked if paying such fine "under threat, duress, and coercion" to avoid arrest would satisfy the court, and upon McRae's affirmation, Plaintiffs paid the fines so noting the conditions on their check.

CLAIMS UPON WHICH RELIEF CAN BE GRANTED

FIRST CLAIM

(21) E.L.S.D. did violate Plaintiffs' rights to practice their deeply held spiritual convictions secured by the First Amendment in the Bill of Rights, Constitution For the Commonwealth of Pennsylvania, and outlined in P.L. 97-280, by infringing upon their rights to, and interfering with their obligations to teach their children pursuant to Biblical ordinances. E.L.S.D. brought a criminal action against the Plaintiffs for allegedly violating 24 P.S. § 13-1327, Compulsory School Attendance. The promulgated and implemented rules and regulations for Title 24 P.S. § 13-1327 make no provision for teaching in the home, nor does the Pennsylvania Code make provision for criminal prosecution. Plaintiffs formally noticed Defendant E.L.S.D. in writing of the aforementioned abuses; therefore, E.L.S.D. willfully and voluntarily, without legislative authority, abused process and maliciously prosecuted the Plaintiffs causing them irreparable harm.

The E.L.S.D. prosecuted the Plaintiffs and labeled them as criminals as a result of Plaintiffs' good faith beliefs to "study, follow, and apply the scriptures as outlines in Scripture and reiterated in federal law. As a result of the unlawful actions of E.L.S.D. and its' employees/agents, Plaintiffs have been subjected to malicious prosecution, abuse of process, harassment, threats, intimidation, humiliation, psychological and physical damages.

SECOND CLAIM

(22) E.L.S.D. did violate Plaintiffs' rights to due process of law as secured by the Fifth and Fourteenth Articles

of the Bill of Rights, and their rights to be free from abuse of process and malicious prosecution secured by the Fifth and Fourteenth Articles of the Bill of Rights. E.L.S.D. never served Plaintiffs with process pursuant to Pennsylvania law and Pennsylvania Rules of Court.

Further, E.L.S.D. refused to answer Plaintiffs' requests for public information under Pennsylvania's "Right to Know Law", as well as Plaintiffs' interrogatories in Docket Nos. NT-0619-94 and NT-0620-94. As a result of the actions of E.L.S.D. and its' employees/agents under color of state law, Plaintiffs' rights to have access to public information to prepare their defense and rights to due process were infringed and violated causing them irreparable harm.

THIRD CLAIM

(23) Principal Robin Schuller, under color of state law, as an agent of the E.L.S.D., did violate federal law and Plaintiffs' rights secured by the First Amendment of the Bill of Rights, to practice their deeply held spiritual convictions in their good faith belief to practice God's Laws, by filing a private criminal complaint, thereby interfering in their family life and obligations pursuant to Biblical ordinance, stating they allegedly violated Pennsylvania Statute 24 P.S. § 1327. Plaintiffs believe this malicious abuse was taken to harass the Plaintiffs in order to coerce them to violate their Spiritual Beliefs by enrolling them in public school, over and above their objections and Divine Law, so that E.L.S.D. might receive State and Federal funds for E.L.S.D.'s enrolled pupils.

Principal Schuller also violated Plaintiffs' rights of access to information by refusing to comply with Pennsylvania's "Right to Know Law", and refusing to answer Plaintiffs' requests for public information regarding legis-

lative authority, statutes, promulgated rules and regulations concerning their alleged violation of the Public School Code. Denying Plaintiffs access to this information has caused them considerable damage and has prejudiced their case.

FOURTH CLAIM

(24) Attorney J. Howard Langdon, attorney for E.L.S.D., who had a fiduciary responsibility to Plaintiffs as their attorney and as their church's attorney, acted under color of state law and prejudiced Plaintiffs due to conflict of interest. Attorney Langdon could and should have known that personal knowledge of the Plaintiffs and their family, and since Attorney Langdon's wife works for the E.L.S.D., to represent E.L.S.D. and prosecute the Plaintiffs was a conflict of interest. As a result of such conflict of interest, Plaintiffs have suffered damage including but not limited to violation of their rights to equal protection under the law and due process of law as a matter of right secured by the Fifth and Fourteenth Articles to the Bill of Rights.

FIFTH CLAIM

(25) District Magistrate C. Roger McRae, under color of state law did violate Plaintiffs' rights secured by the Fifth and Fourteenth Articles of the Bill of Rights, by denying Plaintiffs access to court files dockets NT-0619-94 and NT-0620-94 in which they were named as Defendants. When Plaintiffs requested said court files, Magistrate McRae told Plaintiffs they would have to "subpoena" this information in order to prepare their defense. District Magistrate McRae could and should have known that denying Plaintiffs access to files violated his Oath of Office and Plaintiffs' rights to due process and equal pro-

tection of the law under the Fifth and Fourteenth Articles of the Bill of Rights and thereby prejudiced their case.

Further, Plaintiffs at all times therein demanded and were denied a trial by jury of their peers as a matter of right secured by the Fifth and Sixth Articles of the Bill of Rights.

SIXTH CLAIM

(26) The Pennsylvania State Constables and its employees/agents acting on non-existent complaints, did harass, threaten, and assault Plaintiff Brenda Lawvere by pointing loaded weapons at her person, upon Plaintiffs property in front of Plaintiffs' children, using a pretext of alleged "threats", hence violating her rights secured by the Fourth Article of the Bill of Rights to be secure in her person and her property.

Pennsylvania State Constables did arrest Plaintiff Scott Lawvere at his place of work based upon a warrant issued by Magistrate McRae, but he was never informed of the reason for his arrest nor was he informed of his Constitutional Rights. As a result of the Actions of the State Constables, under color of state law, Plaintiffs have suffered humiliation, emotional distress, anxiety, and now fear law enforcement officers.

WHEREFORE, *for the First Cause of Action,* wherein the East Lycoming School District did violate the Plaintiffs First Amendment Rights by infringing upon their practice of deeply held Spiritual beliefs and as a result of the unlawful actions of the East Lycoming School District and its' employees/agents subjecting Plaintiffs to malicious prosecution, abuse of process, harassment threats, intimidation, humiliation, psychological and

physical damages, the Plaintiffs, Scott and Brenda Lawvere, pray for $1,000,000.00.

For the *Second Cause of Action,* wherein the East Lycoming School District did violate Plaintiffs' right to due process as secured by the Fifth and Fourteenth Articles of the Bill of Rights, and their right to be free from abuse of process and malicious prosecution secured by the Fifth and Fourteenth Articles of the Bill of Rights, and for refusing Plaintiffs access to public information as secured by the First Article of the Bill of Rights, the Plaintiffs, Scott and Brenda Lawvere, pray for $500.000.00.

For the *Third Cause of Action,* wherein Principal Robin Schuller, under color of state law, as an employee/agent of E.L.S.D. did violate Plaintiffs' rights secured by the First Amendment of the Bill of Rights to practice their deeply held spiritual convictions, and did violate Plaintiff's rights of access to public information as secured by the First Amendment of the Bill of Rights, the Plaintiffs, Scott and Brenda Lawvere, pray for $250,000.00 in her professional capacity and $15,000.00 in her individual capacity.

For the *Fourth Cause of Action,* wherein attorney J. Howard Langdon, attorney for E.L.S.D., who had a fiduciary responsibility to Plaintiffs as their attorney and as their church's attorney, acting under color of state law and prejudicing Plaintiffs due to conflict of interest, and as a result of such conflict of interest, Plaintiffs having suffered damage including but not limited to violation of their rights to equal protection under the law and due process of law as a matter of right secured by the Fifth and Fourteenth Articles to the Bill of Rights, the Plaintiffs, Scott and Brenda Lawvere, pray for such sanctions as the court deems appropriate, $100,000.00 in his official capacity, and $25,000.00 in his individual capacity.

For the *Fifth Cause of Action,* wherein District Magistrate C. Roger McRae, under color of state law, did violate Plaintiffs' rights secured by the Fifth and Fourteenth Articles of the Bill of Rights, by denying Plaintiffs access to court files and dockets in which they were named Defendants, violating his Oath of Office, and did deny Plaintiffs a trial by jury of their peers as a matter of right secured by the Fifth and Sixth Articles of the Bill of Rights, Plaintiffs, Scott and Brenda Lawvere, prays pursuant to Fed. R. Civ. P. Rule 62(f), for an injunction against said violation of rights of due process and equal protection under the law, and violation of the right to a jury trial; and further, Scott and Brenda Lawvere requests a recusal of Defendant Magistrate C. Roger McRae from further proceedings in regards to the Plaintiffs, such sanctions as this court deems appropriate, and a written public apology.

For the *Sixth Cause of Action,* wherein The Pennsylvania State Constables and its' employees/agents acting on non-existent complaints, did harass, threaten, and assault Plaintiff Brenda Lawvere by pointing loaded weapons at her person, upon Plaintiffs property, violating her rights secured by the Fourth Article of the Bill of Rights to be secure in her person and her property, and did arrest Plaintiff Scott Lawvere, but never informed him of the reason for his arrest nor was he informed of his Constitutional Rights; and as a result of the actions of the State Constables, under color of state law, Plaintiffs

having suffered humiliation, emotional distress, anxiety, and now fear law enforcement officers, the Plaintiffs, Scott and Brenda Lawvere, pray for such sanctions as this court deems appropriate and $50,000.00.

Respectfully Submitted,

/s/ Scott & Brenda Lawvere
/s/ Ambassadors for Christ

Scott & Brenda Lawvere
Ambassadors for Christ
c/o P.O. Box 46
Unityville, Pa. 17774
717-458-4522

APPENDIX C

[SEAL]
A 17315

District Justice
Magisterial District No. 29-3-03
46 South Main Street
Muncy, PA 17756

Complaint Number

Year Type Number

Complaint Numbers if Other Participants

Incident Number UCR No. OTN

District Attorney's Office ☐Approved ☐Disapproved because:

COMMONWEALTH OF PENNSYLVANIA
Defendant

VS.

Name and Address: Mr. and Mrs. Scott Lawvere
P.O. Box 46
Unityville, PA 17774

R.S.A.
A.K.A.

_____ _____

(Issue Date) *(Signature*

I, Robin Schuller

(Name of Affiant)

of East Lycoming School District

(identify department or agency represented and political subdivision)

residing at _____
do hereby state:

(1) ☒ I accuse the above named defendant, who lives at the address set forth above, or,

☐ I accuse an individual whose name is unknown to me but who is described as _____

☐ his nickname or popular designation is unknown to me and, therefore, I have designated him herein as John Doe; with violating the penal laws of the Commonwealth of Pennsylvania at Lairdsville

(Place - Political Subdivision)

in Lycoming County on or about 8/30, 8/31, 9/1, 9/2, 9/6, 9/7, 9/16, 9/19, 9/20, 9/21, 9/22, 9/23, 9/26, 9/27, 9/28, 9/29, 9/30, 10/3, 10/4, 10/5, 10/6/94

Participants were *(if there were participants, place their names here, repeating the name of above defendant):*

2) The acts committed by the accused were:

ILLEGAL SCHOOL ABSENCES:

In that they did, as parents of a child between the ages of eight and 17 (inclusive), name unknown, permit this child to be illegally absent from school on all of the above said dates which were all legal school attendance days.

all of which were against the peace and dignity of the Commonwealth of Pennsylvania and contrary to the Act

of Assembly, or in violation of 1327 (Section) and _____ (Sub - section) of the Act of School Code of 1949 as further amended

of the _____ Ordinance of _____

(Political Sub - division)

3) I ask that a warrant of arrest or a summons be issued and that the accused be required to answer the charges I have made.

4) I verify that the facts set forth in this complaint are true and correct to the best of my knowledge or information and belief. This verification is made subject to the penalties of Section 4904 of the Crimes Code (18 Pa. C. S. §4904) relating to unsworn falsification to authorities.

October 6 , 19 94 /s/ Robin B. Schuller

(Signature of Complainant)

AND NOW, on this date 10/6 , 19 94, I certify the complaint has been properly completed and verified and that there is probable cause for issuance of process.

29-3-03

(Magisterial District)

/s/ C. Roger McRae (SEAL)

(Issuing Authority)

ADDITIONAL COPY - SEE REVERSE SIDE
FOR WAIVER AND FOOTNOTES

APPENDIX D

[Filed May 31 1996]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Civil Action No. 4:CV-95-1515

JUDGE MALCOLM MUIR

SCOTT and BRENDA LAWVERE,
Plaintiffs,

v.

EAST LYCOMING SCHOOL DISTRICT,
THE PENNSYLVANIA STATE CONSTABLES,
ROBIN SCHULLER,
J. HOWARD LANGDON,
and
DISTRICT MAGISTRATE C. ROGER MCRAE,
Defendants.

EAST LYCOMING SCHOOL DISTRICT
AND ROBIN SCHULLER'S
MOTION FOR SUMMARY JUDGMENT

AND NOW come defendants, East Lycoming School District and Robin Schuller in her individual and official capacities, by and through their counsel, Scherr, Joffe & Zuckerman, P.C., and pursuant to Fed. R. Civ. P. 56, hereby move this Honorable Court to enter Summary Judgment in their favor. In support of their Motion, defendants state:

1. Plaintiffs, Scott Lawvere and Brenda Lawvere, commenced this action by filing a Complaint on or about September 8, 1995 against, *inter alia,* moving defendants herein, East Lycoming School District ("School District") and Robin Schuller ("Schuller"), elementary school principal of the School District.

2. Plaintiffs reside in the School District. Court Order dated January 24, 1996, p. 3.

3. Plaintiffs have school age children. *Id.*

4. Plaintiffs have never enrolled their children in a home schooling program or in the school district. (Scott Lawvere N.T.,[1] p. 80).

5. By way of letter dated September 15, 1994, Schuller informed plaintiffs that they were in violation of the Pennsylvania school attendance statute.[2]

6. Schuller thereafter met with the plaintiffs to discuss home schooling possibilities. (Schuller N.T.[3], p. 9).

7. When the Lawveres did not file a home schooling certificate or enroll their children in school, Schuller informed them in a telephone call on October 4, 1994 that they were subject to criminal charges if they did not comply with the attendance law by October 6, 1994. (Schuller N.T., p. 9; Complaint at ¶ 7).

8. When the Lawveres did not enroll the children or file a home schooling certificate, Schuller signed a crim-

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[1] A true and correct copy of the notes of Mr. Lawvere's deposition testimony is attached hereto as Exhibit A.

[2] A true and correct copy of the letter is attached hereto as Exhibit B.

[3] A true and correct copy of Schuller's deposition testimony is attached hereto as Exhibit C.

inal complaint against them, alleging violation of §1327 of the School Code of 1949.[4]

9. A hearing on the criminal charge, to which plaintiffs pled not guilty, was held before defendant, District Magistrate C. Roger McRae on December 5, 1994. (Complaint at ¶¶10, 13).

10. The Magistrate found the Lawveres guilty. (Complaint at ¶13, Scott Lawvere N.T., p. 79).

11. In their Complaint, plaintiffs seek relief pursuant to 42 U.S.C. §1983 for alleged violations of their civil rights.

12. Plaintiffs allege that Schuller and the School District violated their First Amendment rights by bringing the criminal action against them. (Complaint at ¶¶21, 23).

13. Plaintiffs further allege that movants violated their due process rights by failing to serve them with process in the filing of the criminal complaint and by maliciously prosecuting them. (Complaint at ¶21, 22, 23).

14. Plaintiffs further allege that movants violated their due process rights by failing to comply with Pennsylvania's "right to know law." (Complaint at ¶22, 23).

15. The School District has an obligation to enforce compliance with the compulsory school attendance statute.

16. The compulsory school attendance law comports with the First Amendment of the United States constitution.

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[4] A true and correct copy of the criminal complaint is attached hereto as Exhibit D.

17. The service of the criminal complaint comported with the Pennsylvania Rules of Criminal Procedure.

18. The violation of a state law does not give rise to liability under 42 U.S.C. §1983.

19. The finding of guilt in the underlying criminal matter precludes §1983 liability for malicious prosecution.

20. Neither Schuller nor the School District committed any act which deprived plaintiffs of any federally guaranteed right.

21. There is no dispute about any material fact.

22. Schuller and the School District are entitled to judgment as a matter of law.

WHEREFORE, defendants Robin Schuller and East Lycoming School District respectfully request this Honorable Court to enter Summary Judgment in their favor and dismiss them from this matter with prejudice.

Respectfully submitted

SHERR, JOFFE & ZUCKERMAN, P.C.

BY: /s/ Deborah Z. Winfield
Anthony R. Sherr
Deborah Z. Winfield
Attorneys for Defendants,
Robin Schuller and
East Lycoming School District

May 30, 1996

[Filed Jun 5 1996]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Civil Action No. 4:CV-95-1515

JUDGE MALCOLM MUIR

SCOTT and BRENDA LAWVERE,
Plaintiffs,

v.

EAST LYCOMING SCHOOL DISTRICT,
THE PENNSYLVANIA STATE CONSTABLES,
ROBIN SCHULLER,
J. HOWARD LANGDON,
and
DISTRICT MAGISTRATE C. ROGER MCRAE,
Defendants.

DEFENDANTS, EAST LYCOMING SCHOOL DISTRICT AND ROBIN SCHULLER's, MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

I. *INTRODUCTION*

In this purported civil rights action, plaintiffs allege that they were deprived of their constitutional rights by the East Lycoming School District's actions to compel compliance with Pennsylvania's compulsory school attendance statute. The record demonstrates that neither Schuller nor East Lycoming School district engaged in

any conduct giving rise to liability. Moving defendants are entitled to summary judgment in their favor.

II. *HISTORY OF THE CASE*

On September 17, 1994, plaintiffs Scott Lawvere and Brenda Lawvere received a letter[1] from defendant Robin Schuller ("Schuller"), elementary school principal for defendant East Lycoming School District ("School District"), informing them that they were in violation of the Pennsylvania compulsory school attendance statute. (Complaint at ¶ 6). Schuller and the plaintiffs met to discuss home schooling possibilities. (Schuller N.T.[2], p. 9). When the Lawveres failed to comply with the statute by filing home schooling papers or enrolling their children in the school district, (*Id.*), Schuller called them on October 4, 1994, warning that they were subject to criminal charges if they did not file an enrollment certificate with the School District by October 6, 1994. (Complaint at ¶ 7). Following their failure to file the certificate, Schuller signed a criminal complaint[3] against the Lawveres alleging violation of section 1327 of the School Code of 1949, 24 Pa. C.S. § § 1-101 *et seq.*

The Lawveres entered a not guilty plea (Complaint at ¶ 10), and a hearing was held before District Magistrate C. Roger McRae on December 5, 1994. The Magistrate found them guilty and levied fines. (Complaint at ¶ ¶ 13,

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[1] A true and correct copy of Schuller's letter is attached to defendants' Motion as Exhibit B.

[2] A true and correct copy of the notes of Ms. Schuller's deposition testimony is attached to defendants' Motion as Exhibit C.

[3] A true and correct copy of the criminal complaint is attached to defendants' Motion as Exhibit D.

20; Scott Lawvere N.T.[4] p. 79). The Lawveres never appealed from the conviction.

On or about September 8, 1995, plaintiffs, proceeding *pro se,* commenced this civil rights action pursuant to 42 U.S.C. §1983 by filing a Complaint. The plaintiffs contend that the School District and Schuller violated their First Amendment rights by bringing a criminal action against them for violation of the Compulsory School Attendance Law, 24 Pa. C.S. §13-1327. (Complaint at ¶¶21, 23). They further contend that the Schuller and the School District violated their due process rights by failing to serve them with process in the filing of the private criminal complaint and by failing to comply with Pennsylvania's "right to know" law. (Complaint at ¶¶22, 23). Schuller and the School District filed an answer on October 12, 1995. Schuller and the School District now move for Summary Judgment.

III. *STATEMENT OF QUESTIONS INVOLVED*

A. Whether plaintiffs can show that Schuller and the School District did anything to violate their First Amendment rights?

(Suggested answer in the negative).

B. Whether plaintiffs can show that Schuller and the School District did anything to violate their due process rights?

(Suggested answer in the negative).

C. Whether the undisputed material facts establish that Schuller is entitled to qualified immunity?

(Suggested answer in the affirmative).

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[4] A true and correct copy of the notes of Mr. Lawvere's deposition testimony is attached to defendants' Motion as Exhibit A.

IV. *ARGUMENT*

A. *SUMMARY JUDGMENT STANDARD*

Summary judgment is proper where there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c). "The mere existence of some alleged factual dispute between the parties' will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). A genuine issue of material fact arises only if a reasonable jury could find for the non-moving party on that fact. Id. at 248. The non-movant is not given the benefit of every inference or possibility, but only of every reasonable inference. *Spence v. Zimmerman*, 873 F.2d 256, 257 (11th Cir. 1989). The non-moving party must offer sufficient evidence such that a reasonable jury could return a verdict in favor of that party. *Anderson*, 477 U.S. at 248. "If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." Id. at 250-51. (citations omitted). Rule 56(c) mandates the entry of summary judgment against a party who fails to produce evidence sufficient to establish an essential element of its case, on which he will bear the burden of proof at trial. *Celotex v. Catrett*, 477 U.S. 317, 322 (1986).

In this matter, the record evidence demonstrates that plaintiffs are unable to establish essential elements of their claims against moving defendants, who are entitled to the entry of summary judgment in their favor.

B. *THE SCHOOL DISTRICT AND SCHULLER DID NOT VIOLATE PLAINTIFFS' FEDERAL RIGHTS.*

To prevail in this action, plaintiffs must demonstrate that defendants deprived them of a right secured by the Constitution or laws of the United States. *Shaw by Strain v. Strackhouse*, 920 F.2d 1135, 1142-43 (3d Cir. 1990). Record evidence demonstrates that neither Schuller nor the School District deprived plaintiffs of any constitutional rights.

1. *FIRST AMENDMENT CLAIM*

The Pennsylvania School Code of 1949, 24 Pa. C.S. §§1-101 *et seq*, provides that every compulsory school age child must attend a day school. 24 Pa. C.S. §13-1327(a). "Compulsory school age" is defined as the period of a child's life from the time the child's parents elect to have the child enter school, which shall be not later than at the age of eight (8) years, until the age of seventeen (17) years. 24 Pa. C.S. §13-1326. The parents or guardians of compulsory school age children are required to send such children to a day school. §13-1327(a). The statute permits enrollment in a school operated by a church or religious body. 24 Pa. C.S. §13-1327(b). Alternatively, the Code provides that a home education program conducted by a parent or guardian complies with its attendance requirements. 24 Pa. C.S. §13-1327(d). The requirements for pursuing a home schooling program are set forth at 24 Pa. C.S. §13-1327.1. Prior to the commencement of the program, and annually thereafter, the parents must file a notarized affidavit with the school superintendent setting forth certain information about the home schooling program. 24 Pa. C.S. §13-1327.1(b)(1).

In addition, the School Code mandates that it is the duty of school district employees to enforce the attendance provisions. A school district employeee who fails to comply is subject to penalty. §13-1355. Section 13-1354 states:

> It shall be the duty of every principle or teacher of a public school to report immediately to the attendance officer, district superintendent, or secretary of the board of school directors, the names of all children in the list furnished to him who have not appeared for enrollment . . . . Such person shall thereupon serve upon the parent, guardian, or other person in parental relation to such children unlawfully absent from school, the written notice hereinbefore provided, and if shall appear that, within three (3) days thereafter, any child parent, guardian, or other person in parental relation shall have failed to comply with the provisions of this act, the superintendent, attendance officer, or secretary of the board of school directors, in the name of the school district, shall proceed against the person so offending, in accordance with the provisions of this act.[5]

It is well established that the compulsory attendance provisions of the School Code of 1949 do not interfere

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[5]The procedure and penalties for non-compliance are set forth at §13-1333:

> Every parent, guardian, or person in parental relation, having control or charge of any child or children of compulsory school age, who shall fail to comply with the provisions of this act regarding compulsory attendance, shall on summary conviction thereof, be sentenced to pay a fine . . . . Before any proceedings are instituted against any parent, guardian or person in parental relation, for failure to comply with the provisions of this act, the district superintendent, attendance officer, or secretary of the board of school directors, shall give the offending person three (3) days written notice of such violation.

with constitutional guarantees. *Jeffry v. O'Donnell*, 702 F. Supp. 516 (M.D. Pa. 1988); *Com. v. Smoker*, 177 Pa. Super. 435, 110 A.2d 740 (1955); *Com. v. Bey*, 166 Pa. Super. 136, 70 A.2d 693 (1950).

Notwithstanding the statutory provisions and the fact that the Code comports with constitutional guarantees, plaintiffs assert that Schuller and the School District violated their First Amendment right of freedom of religion by bringing the criminal action against them. Plaintiffs concede that they have never enrolled their children in the school district schools or in a home schooling program. Thus, they were in violation of the School Code in September, 1994.

Ms. Schulller complied with her statutory duty by notifying the Lawveres on September 15, 1994, that they were in violation of the Code. She was also duty-bound, pursuant to §13-1354, to sign the criminal complaint against the plaintiffs. This matter is in essence a challenge to the constitutionality of the compulsory attendance provisions of the School Code. However, Schuller engaged in no conduct giving rise to constitutional liability. She cannot be liable for enforcing a constitutionally valid statute.[6]

Plaintiffs are not entitled to relief under 42 U.S.C. §1983 against the School District. In its landmark decision of *Monell v. Department of Social Services*, 436 U.S. 658, 694 (1978), the United States Supreme Court squarely held "that a local government may not be sued under §1983 for an injury inflicted solely by its employ-

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[6]There is absolutely no evidence that Schuller was acting in any capacity other than as the elementary school principal. Thus, the claims against her in her individual capacity must be dismissed.

ees or agents. Instead, it is when execution of the Government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the Government as an entity is responsible under §1983". The Court further held "Congress did not intend municipalities to be held liable unless action pursuant to official municipal policy of some nature caused the Constitutional tort." 436 U.S. at 691.

In *City of Los Angeles v. Heller*, 475 U.S. 796 (1986), the United States Supreme Court held that a municipal entity cannot be held liable for a civil rights violation where there is no underlying Constitutional violation by the individual officer. In *Williams v. Borough of West Chester*, 891 F.2d 458, 467 n.14 (3d Cir. 1989), the Third Circuit Court of Appeals noted that where a plaintiff's claim focuses on the harm due to the actions of municipal employees, rather than by harm directly traceable to a municipal policy itself, municipal liability claims must be dismissed where the individual employee is exonerated. *See also Simmons v. Philadelphia*, 947 F.2d 1042, 1063 (3d Cir. 1991).

In their complaint, plaintiffs did not allege that the School District had a policy or custom of unconstitutional conduct, and the record contains no evidence from which such an inference could be drawn. Moreover, there was no underlying constitutional violation by the individual defendant. Accordingly, plaintiffs' claims against the School District must be dismissed.

2. *DUE PROCESS VIOLATIONS*

Plaintiffs allege that movants violated their due process rights by subjecting them to malicious prosecution and abuse of process. To prevail on a claim for malicious

prosecution, plaintiffs must prove that the underlying prosecution was terminated in favor of the accused. *Losch v. Borough of Parkesburg,* 736 F.2d 903, 907 (3d Cir. 1984). It is undisputed that the Lawveres were found guilty of the underlying charges. Their malicious prosecution claim fails.

Plaintiffs' claim that movants' alleged abuse of process deprived them of due process is similarly without support in the record. Abuse of process occurs where the party employes it for some unlawful object, not the purpose which it is intended by the law to effect; in other words, a perversion of it. *Jennings v. Shuman,* 567 F.2d 1213, 1217 (3d Cir. 1977). The plaintiff must demonstrate an ulterior motive for the defendants' actions and a use of the process for a purpose other than that for which it was designed. *Harvey v. Pincus,* 549 S. Supp. 332, 340 (E.D. Pa. 1982). Instantly, the record is devoid of evidence which would establish that Schuller signed the criminal complaint for any ulterior motive, or that she did so for any other purpose than to compel the Lawvere childrens' attendance at some type of state approved schooling. Plaintiffs cannot sustain their summary judgment burden with respect to their abuse of process claim.

Plaintiffs seek to recover damages for movants' alleged failure to comply with Pennsylvania's "right to know law," presumably 65 Pa. C.S. §66.1 *et seq.* Even assuming the truth of their factual allegations, 42 U.S.C. §1983 does not grant a cause of action for violation of state statutes. *See Shaw by Strain v. Strackhouse, supra.* Moreover, should the Court construe this claim as a state law claim, plaintiffs are not entitled to damages under the statute. The remedy for a citizen denied rights under the law must appeal from that denial to the court of com-

mon pleas, which may order disclosure if deemed proper. 65 Pa. C.S. §66.4. The appeal process is the exclusive remedy for a person whose request for examination and inspection of public records is denied. *Wiley v. Woods*, 393 Pa. 341, 141 A.2d 844 (1958). Defendants are entitled to summary judgment on plaintiffs' claims for damages pursuant to the "right to know" law.

Finally, plaintiffs allege that they were deprived of due process by the School District's failure to properly serve them with the complaint. However, Mr. Lawvere admitted that it was the district magistrate, not the School District, who violated the rules of criminal procedure with respect to service. (Lawvere N.T., p. 60). The record evidence establishes that movants are not liable for this alleged due process violation.

C. *MS. SCHULLER IS ENTITLED TO QUALIFIED IMMUNITY.*

Even if this Court determines that Ms. Schuller is not entitled to summary judgment on grounds that there was no constitutional deprivation, she is entitled to qualified immunity from this suit. See *Mitchell v. Forsyth*, 472 U.S. 511, 105 S.Ct. 2806, 86 L.Ed.2d 411 (1985) (qualified immunity is an immunity from suit rather than a mere defense to liability); *Gooden v. Howard County*, 954 F.2d 960 (4th Cir. 1992) (basic purpose of qualified immunity is to spare individual officials the burdens and uncertainties of standing trial in those instances where their conduct would strike an objective observer as falling within the range of reasonable judgment).

The Supreme Court held, in *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982), that government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does

not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *Harlow* redefined the doctrine of qualified immunity of government officials and made the standard one of objective good faith on the part of the officials, rather than a subjective good faith test. The Court held:

> . . . a government official performing discretionary functions, generally are shielded from liability for civil damages *in so far as the conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.*

Id. at 18. (emphasis added). This standard is to be narrowly construed in favor of the defendants. *Id.* Qualified immunity provides protection to all but the plainly incompetent or those who knowingly violate the law. *Malley v. Briggs*, 475 U.S. 335 (1986). In *Anderson v. Creighton*, 483 U.S. 635, 640 (1987), the Court explained that the right the official is alleged to have violated must have been "clearly established" in the context of the particular facts and circumstances. That is, the question is whether a reasonable official could have believed her conduct was lawful in light of clearly established law and the information the official possessed. 483 U.S. at 641. The question of qualified immunity is a question of law for the Judge to determine. *Czurlanis v. Albanese*, 721 F.2d 98, 108 (3d Cir. 1983).

Instantly, a reasonable school principal in Schuller's position could have believed that her conduct in signing the criminal complaint was lawful. As discussed, it has been held that the compulsory attendance statute is constitutional. Schuller was statutorily obligated to proceed against the Lawveres. There is no record evidence which suggests that she is not immune from plaintiffs' claims.

V. *CONCLUSION*

For all the foregoing reasons, Robin Schuller and the East Lycoming School District respectfully request this Honorable Court to grant their Motion for Summary Judgment and dismiss them from this matter with prejudice.

Respectfully submitted,

SHERR, JOFFE & ZUCKERMAN, P.C.
BY: /s/ Anthony R. Sherr
Anthony R. Sherr
Attorney for Defendants,
East Lycoming School District
and Robin Schuller

June 4, 1996

[Certificate Of Service Omitted In Printing]

APPENDIX E

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

Case Number 4:CV-95-1515

Complaint Filed 9/8/95

(Judge Muir)

Mr. & Mrs. Scott Lawvere

Plaintiffs

vs.

The East Lycoming School District
and The Pennsylvania State Constables
Robin Schuller, Principal
J. Howard Langdon, Attorney
and C. Roger McRae, District Magistrate
in their official and individual capacities

Defendants

PLAINTIFFS' OBJECTION IN OPPOSITION TO
EAST LYCOMING SCHOOL DISTRICT
AND ROBIN SCHULLER'S
MOTION FOR SUMMARY JUDGMENT

COMES NOW, Plaintiffs Scott and Brenda Lawvere, to submit their Objection in Opposition to East Lycoming School District and Robin Schuller's Motion for Summary Judgement pursuant to the Federal rules of Civil Procedure and Local Rule 7.4. Plaintiffs' memorandum of law is incorporated herein.

1. In regards to Defendants East Lycoming School District (hereinafter known as Defendant District) and Robin Schuller's (hereinafter known as Defendant Schuller) paragraph 1, it is an undisputable fact that Plaintiffs filed a Title 42, §1983 civil rights action wherein the School District and Schuller, in her official and individual capacities, were named Defendants.

2. Plaintiffs' object. In response to *Defendants' paragraph 2 and 3,* Defendant District and Schuller are misquoting and twisting the Court's Order of January 24, 1996. In its order of January 24, 1996, *the Court was quoting Defendant Langdon's* Statement of Material Facts wherein Defendant Langdon alleged Plaintiffs had "three school aged children" and that Plaintiffs "reside within the East Lycoming School District."

The Court has not made a judicial determination that the Plaintiffs did reside within the body politic known as the East Lycoming School District or that Plaintiffs had three school-aged children.

3. In response to *Defendants' paragraph 4,* Plaintiffs are not required to enroll their children in a home education program. 24 P.S. §13-1327.1 states that "home education programs" are considered a *public school* "under provisions of this act." Plaintiffs cannot find and Defendants have failed to show that children are required to be "enrolled" in public school. [See attached copy of 24 P.S. §13-1327.1 - Home Education Program]. (see Plaintiffs attached exhibit "AU") (Defendants' exhibits are not clearly marked; exhibit "A" is not attached.)

4. Regarding *Defendants' paragraph 5,* Defendants have never shown that Plaintiffs have "school aged children" that are "required" to be enrolled in public school. Further, Defendants have never offered any evidence that Plaintiffs have violated compulsory attendance laws.

Defendants' exhibits are not clearly marked; the alleged "exhibit A", should be "exhibit B" as referenced. No exhibit marked "B" is attached.

5. In response to *Defendants' paragraph 6*, Defendants' exhibits are not clearly marked; it is presumed the unmarked exhibit is "C". Plaintiff Scott Lawvere did meet with Principal Robin Schuller on September 23, 1994, to come to an understanding of the complaint Defendant School District had received against the Plaintiffs and what could be done to resolve any problems. Defendant Schuller was *without authority* to resolve any disputed issues and referred the Plaintiffs to Edward Harrington, District Superintendent. [See Letter to Robin Schuller, Plaintiffs' exhibit "TTT"]. No exhibit "C" was attached to Defendants Motion for Summary Judgment.

6. Regarding *Defendants' paragraph 7*, no mention is made of Robin Schuller's phone call on page 9 of her testimony. When Plaintiff Brenda Lawvere spoke to Defendant Schuller on October 4, 1994, she requested copies of school policies and regulations regarding teaching children at home. Defendant Schuller did say she would file criminal charges against Plaintiffs if they failed to file an enrollment affidavit.

7. Plaintiffs object to *Defendants' paragraph 8*. Plaintiffs were not required to enroll their children in public school, nor were they required to file a home schooling certificate for a "home schooling program" which is also a "public school". [See Plaintiffs' aforementioned paragraph 3].

On October 6, 1994, Defendant Robin Schuller, directed by Superintendent Harrington, the East Lycoming School Board, and Attorney J. Howard Langdon, filed a private

criminal complaint against the Plaintiffs for alleged violations of 24 P.S. §13-1327.

As required by law, neither Defendant Schuller nor the East Lycoming School District and its representatives submitted their complaint and evidence to the District Attorney for Lycoming County. It is prima facie that the private criminal complaint lacks the approval and signature of the District Attorney. [See Plaintiffs exhibit "CC"].

8. Plaintiffs object to *Defendants' paragraph 9 and 10.* Plaintiffs original pleading was "non assumpsit" since Plaintiffs were under threat of arrest and were never duly served and did not know or understand the nature of the charges brought against them. The District Justice's Clerk, Lori Lynn refused to accept Plaintiffs non assumpsit plea and threatened to have them arrested. Under threat, duress, and coercion Plaintiffs submitted a "not guilty" plea to Clerk Lori Lynn. [See Plaintiffs attached exhibit "AV"].

Plaintiffs were prosecuted by Attorney J. Howard Langdon who represented the State in this criminal action. At the December 5, 1994, hearing Attorney Langdon used the court to conduct what amounted to a discovery hearing. Plaintiffs Motion for Extension of Time to find competent counsel and Motion to Dismiss were dismissed. Over and above Plaintiffs' objections, without subject matter or personal jurisdiction. Plaintiffs were found "guilty" by District Justice McRae.

9. Plaintiffs agree with *Defendants' paragraph 11.* They instituted this Title 42, sec. 1983 action for violations of their civil rights.

10. Plaintiffs agree with *Defendants' paragraph 12.* Defendant East Lycoming School District and Principal

Robin Schuller did violate Federal law and Plaintiffs' rights secured by the First Amendment to protect their freedom of religion and their rights to direct and control the education and upbringing of their children. Plaintiffs have shown and will show that Defendants have a custom and policy of unconstitutional conduct, even though they have sworn to uphold the Constitution of the United States and of the Commonwealth.

11. In response to *Defendants' paragraph 13,* Plaintiffs not only allege but they also will prove herein that they were not duly served with process in cases NT-0000619-94 and NT-0000620-94 pursuant to the Pennsylvania Rules of Court - Criminal.

Plaintiffs noticed the Defendants that as a result of the damages suffered, any other acts performed by the Defendants would be willful and intentional act of maliciousness [see Plaintiffs attached exhibit "KKK"]. Since the Defendants failed to respond or rebut the Notice and continued to cause Plaintiffs further damage, the presumption is therefore established fact that the Defendants maliciously damaged the Plaintiffs. (Title 28, Rule 301, Federal Rules of Evidence).

12. In response to *Defendants' paragraph 14,* Defendants' East Lycoming School District and Robin Schuller refused to answer and respond to Plaintiffs requests for public records and information under Pennsylvania's Right To Know law. Defendant Schuller, Mr. Harrington, or Defendant District, by their silence, agreed with presumptions set forth in Plaintiffs' correspondence. [see Plaintiffs' exhibits marked "MMM" and "TTT" - Letters to Mr. Harrington and Robin Schuller].

13. In response to *Defendants' paragraph 15,* Plaintiffs are unsure if Defendant School District has an obli-

gation to enforce compliance with compulsory school attendance. Plaintiffs cannot find in Act 1988-169 or 24 P.S. §13-1327 any mention of an obligation on behalf of Defendant School District.

14. Plaintiffs object to *Defendants' paragraph 16,* the compulsory attendance regulations do not "comport" or "behave in a manner comformable to what is right" with the First Amendment of the United States. There are no regulations pertaining to teaching children at home, and therefore Plaintiffs were prosecuted on non-existent regulations, a fact Plaintiffs continually made known to the Defendants.

15. Plaintiffs object to *Defendants' paragraph 17;* Defendants did not follow the Pennsylvania Rules of Court - Criminal for service of process. In fact, Plaintiffs never received duly served process as outlined by the State rules, as shown by the Court docket [see Plaintiffs' previous exhibit "YY"].

16. Plaintiffs object to *Defendants' paragraph 18;* it is not the violation of State law that Plaintiffs are arguing, but the violation and deprivation of Plaintiffs civil rights which was done *under color of State law.* "Any person that causes the deprivation of rights is liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." *David v. Johnson.* (1955 DC Ill) 138 F.Supp. 572.

17. Plaintiffs object to *Defendants' paragraph 19.* Defendants are NOT precluded from liability. The criminal action brought against Plaintiffs was never approved by the State Attorney, the magisterial district never had personal or subject matter jurisdiction, Plaintiffs were never duly served, never given the opportunity to interview witnesses, never given the opportunity to examine

the court docket, never given access to public information and the courts, never given equal protection under the law. The complaint filed by Principal Schuller and the ongoing proceedings were a sham. Since the magisterial district did not have jurisdiction, any and all subsequent decisions made by District Justice McRae are null and void.

18. Plaintiffs object to *Defendants' paragraph 20.* Defendants East Lycoming School District and Principal Robin Schuller refused to comply with Plaintiffs discovery requests for public information with which to prepare a defense in the State action. To date, the Defendants have also not complied with Plaintiffs discovery requests in this instant action.

Principal Robin Schuller filed a private criminal complaint against the Plaintiffs without an investigation, information, evidence, or probable cause. Plaintiffs had a Fifth amendment right to be informed of the nature and cause of the alleged violation; the right to face their accuser; to enjoy the right to a speedy and public trial by an impartial jury; and to have compulsory process for obtaining witnesses in their favor.

In turn Plaintiffs received silence to their requests of the nature and cause of the accusation and the name of their accuser. Plaintiffs were denied access to the court and a speedy and public trial of their peers. Defendant School District by and through its attorney denied Plaintiffs the right to discovery, including but not limited to the right to obtain witnesses in their defense. The acts which the Defendants committed in violations of Plaintiffs rights are numerous and shock the conscience. As a result of damages suffered at the hands of Principal Schuller and the East Lycoming School District, Plaintiffs suffered further damage and humiliation at the

hands of the District Justice and the Pennsylvania State Constables.

19. Plaintiffs object to *Defendants' paragraph 21.* There are numerous disputes regarding material facts. A jury needs to determine to what extent Defendant East Lycoming School District and Robin Schuller overstepped their bounds granted by legislative authority, and to grant Plaintiffs reasonable redress of damages as referenced in their complaint.

20. Plaintiffs object to *Defendants' paragraph 22.* Defendants are NOT entitled to judgment as a matter of law. Defendants have not submitted sufficient proof, affidavits, or any evidence to show that they have not violated Plaintiffs rights and that they are without liability for their actions. Therefore, Defendants are not even entitled to judgment based upon evidence, since they have not submitted preponderance of evidence.

WHEREFORE, Defendants East Lycoming School District and Robin Schuller should be denied summary judgement in their favor. This case has numerous material disputes and should be allowed to move forward to trial.

Respectfully submitted,

/s/ Scott & Brenda Lawvere
/s/ Ambassadors for Christ

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Ambassadors for Christ
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[Certificate Of Service Omitted In Printing]

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

Case Number 4:CV-95-1515

Complaint Filed 9/8/95

(Judge Muir)

Mr. & Mrs. Scott Lawvere

Plaintiffs

vs.

The East Lycoming School District
and The Pennsylvania State Constables
Robin Schuller, Principal
J. Howard Langdon, Attorney
and C. Roger McRae, District Magistrate
in their official and individual capacities

Defendants

PLAINTIFFS' BRIEF IN SUPPORT OF THEIR OBJECTION IN OPPOSITION TO DEFENDANTS EAST LYCOMING SCHOOL DISTRICT AND ROBIN SCHULLER'S MOTION FOR SUMMARY JUDGMENT

COMES NOW, Plaintiffs Scott and Brenda Lawvere, to submit their Brief in Support of their Objection in Opposition to Defendants' East Lycoming School District and Robin Schuller's Motion for Summary Judgment pursuant to the Federal Rules of Civil Procedure and Local Rule 7.4. Plaintiffs hereby incorporate their Objection in Opposition and Statement of Facts; Plaintiffs' memorandum of law is incorporated herein.

I. PROCEDURAL HISTORY

1. Plaintiffs filed this Title 42, sec., 1983 action on September 8, 1995, for violations of their civil rights by the named Defendants including but not limited to the East Lycoming School District (hereinafter called Defendant District) and Principal Robin Schuller (hereinafter called Defendant Schuller).

II. STATEMENT OF FACTS

2. On September 17, 1994, Plaintiffs received a letter from Defendant Schuller stating that it had "come to the East Lycoming School District's attention" that Plaintiffs allegedly had school-aged children. She further alleged that Plaintiffs were in "violation" of the Public School Code and demanded that Plaintiffs enroll their children in the Defendant District under threat of prosecution.

Defendants *misquote* Plaintiffs' complaint para. 6 in that Plaintiffs never stated they received a letter alleging violations nor did they ever receive a Notice of Violation.

On September 23, 1994, Plaintiff Scott Lawvere met with Defendant Schuler to discuss Plaintiffs' alleged non-compliance with the compulsory attendance provisions of the Public School Code. At this meeting, Plaintiff testified regarding his deeply held spiritual convictions and asked who had filed a complaint with the School District about alleged non-compliance. Plaintiffs' attempted to resolve any misunderstandings, but Defendant Schuller did not have the authority to resolve any conflicts. [see Plaintiffs previous exhibit "TTT" - Letter to Robin Schuller]

4. On October 5, 1994, Plaintiffs sent letters to Superintendent Harrington and Defendant Schuller as evidence

of Plaintiff's meeting and demanded a copy of the original complaint made against them to Defendant District as well as copies of the statutes, rules, and regulations pertaining to education in the home that Defendants believed the Lawveres had violated. Plaintiffs correspondence was never rebutted. By their silence, Mr. Harrington ard Defendant Schuller agreed that these rules and regulations do not exist and that they erred in their allegations against Plaintiffs.

In addition, Defendant Schuller was told not to answer Plaintiffs' correspondence by Superintendent Harrington. **[Plaintiffs exhibit "AP" - Robin Schuller, N.T. 15].**

5. Unaware to Plaintiffs, Defendant Robin Schuller, filed private criminal complaints against the Plaintiffs upon the recommendation of Defendant District on October 6, 1994 **[see Plaintiffs exhibit "AW" - Jane Dewire, N.T. 15]**; said complaints were filed with Magisterial District 29-3-03 before District Justice McRae for alleged violations of the Pennsylvania School Code, compulsory attendance provisions.

6. Before filing private criminal complaints against Plaintiffs for alleged misdemeanors, neither Defendant District, Attorney Howard Langdon, nor Principal Robin Schuller received approval from the Lycoming County State Attorney's office as is required by law. This is evidenced by Plaintiffs previously filed exhibits and the Pennsylvania Rules of Court - Criminal, Rules 51, 100-134.

Pa. R. Cr. P. Rule 133. "APPROVAL OF PRIVATE COMPLAINTS', specifically states: "(a) When the affiant is not a law enforcement officer and the offense(s) charged include(s) a misdemeanor or felony which does not involve a clear and present danger to any person or

to the community, the complaint shall be submitted to an attorney for the Commonwealth, who shall approve or disapprove without unreasonable delay."

7. On October 14, 1994, Plaintiffs received a letter from the Pennsylvania State Constables stating that a warrant had been issued for their arrest due to "illegal school absences". **[see Plaintiffs exhibit "U" - Letter from Constables]**. This is the first time that Plaintiffs were aware that some action had been taken against them. They were informed that failure to appear on October 19, 1994, would result in their "arrest anywhere within the Commonwealth."

On October 19, 1994, Plaintiffs went to District Justice McRae's office to enter a plea of "non assumpsit" since they did not know the nature of the action. Plaintiffs had never received service of process. Clerk Lori Lynn refused to accept Plaintiffs' plea and informed them that without entering the plea demanded they would be arrested. Plaintiffs entered a plea of "not guilty" under threat, duress and coercion as evidenced by their attached **exhibit "AV"**.

8. On December 5, 1994, during a summary hearing, Plaintiffs were found "guilty" of violating the compulsory school attendance provisions of the Public School Code of Pennsylvania. Plaintiffs were denied an extension of time to prepare a defense and seek competent counsel.

As evidenced by the previously filed court docket, Plaintiffs were never duly served a complaint or summons as provided by the Pennsylvania Rules of Court - Rules of Criminal Procedure. Further, Attorney for the Defendant District, J. Howard Langdon, refused to answer Plaintiffs' discovery requests and told Plaintiffs that criminal proceedings have no provision for discovery. As a result

of J. Howard Langdon and his client's refusal to answer discovery requests, Plaintiffs were denied the right to prepare a defense, and have a fair trial. *Coppolino v. Helpern,* (1967, SD NY) 266 F.Supp 930. *Johnston v. National Broadcasting Co.,* (1973, ED NY) 356 F.Supp, 904.

9. No final order was ever issued in NT-0000619-94 and NT-0000620-94 even after numerous requests by the Plaintiffs, therefore the Prothonotary's office would not allow Plaintiffs to proceed with an appeal pursuant to the Pennsylvania Rules of Court - Appellate Procedure. Plaintiffs were prejudiced and damaged from the outset of the aforementioned cases.

Plaintiffs were continually harassed and threatened that they would be prosecuted and have their children ripped from their home by the Defendants through Children and Youth Services.

10. Plaintiffs filed their caveat in cases NT-0000619-94 and NT-0000620-94 putting all interested parties on notice that Plaintiffs numerous rights had been violated including but not limited to due process of law. Plaintiffs repeatedly noticed District Justice McRae and the parties, therefore it must be presumed that they acted with malice and willful disregard of Plaintiffs' rights and property. District Justice McRae, Attorney Langdon and his client not only violated their Oaths of Office, but also the bounds of authority granted to them by government. *Fed. Crop Ins. Corp. v. Merrill,* 332 U.S. 380 at 384, (1947).

11. Plaintiffs' submitted their Unsworn Declaration Under Penalty of Perjury that they could not afford to pay any fines, fees, or costs. As a result, Plaintiff Scott Lawvere received a letter from the Pennsylvania State

Constables dated May 3, 1995, that a warrant had been issued for his arrest.

12. No warrant or notice was ever sent to Plaintiff Brenda Lawvere even though she was a named defendant in the State action and allegedly found "guilty" of Compulsory School Attendance statutes. Therefore, Plaintiff Scott Lawvere's rights to equal protection under the law secured by the Fourteenth Amendment were also violated.

13. On May 13, 1995, Plaintiffs received another letter regular mail from the Pennsylvania State Constables' office stating that Plaintiff Scott Lawvere was to report to District Justice McRae's office. Plaintiffs repeatedly called the District Justics's office to resolve any issues or problems but were denied access to the District Justice.

14. On May 19, 1995, as a result of the illegal and unlawful actions of Defendants District and Defendant Robin Schuller, Plaintiff Brenda Lawvere and her children were assaulted by Pennsylvania State Constables and suffered many violations of their civil rights. Their mental anguish continues to cause them mental grief and physical anguish to this day.

As a result of the unlawful actions of Defendants District and Schuller, Plaintiff Scott Lawvere suffered many civil rights violations including but not limited to equal protection, informed of reason of his arrest, and Miranda rights. To this day, Plaintiff and his family continue to suffer mental and physical anguish.

III. QUESTIONS

1. Have Defendant East Lycoming School District and Robin Schuller violated Plaintiffs' First Amendment Rights?

2. Have Defendant Schuller and East Lycoming School District violated Plaintiffs' rights to due process?

3. Are there undisputable material facts, and do they establish that Defendant Schuller has qualified immunity?

IV. ARGUMENT

15. Plaintiffs concur with Defendants District and Schuller regarding *F.R.C.P. Rule 56(c)* in that: "The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

Defendants District and Schuller bear the burden of showing the court, by reference to materials on file that there are no genuine issues of material facts that should be decided at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Clark v. Coats & Clark, Inc.*, 929 F.2d 604 (11th Cir. 1991).

When determining if issues of material fact exist, and if the moving party is entitled to judgment as a matter of law, the court must draw inferences from the evidence presented (i.e., pleadings, depositions, interrogatories, admissions, and affidavits) in the light most favorable to the nonmovant and resolve all reasonable doubts in that party's favor. *Spenc v. Zimmerman*, 873 F.2d 256 (11th Cir 1989).

To date, Defendants East Lycoming School District and Robin Schuller have *NOT* presented any affidavits in their defense. Defendants have *NOT* presented any affidavits showing that they did not in fact, commit the acts alleged in Plaintiffs complaint. Further, discovery has

shown that Defendants have a policy and custom of violating one's civil rights. *Kraus v. County of Pierce,* (1986, CA9 Wash), 793 F2d 1105, cert den 480 US 932, 94 L Ed 2d 763, 107 S Ct 1571.

To date Defendants District and Schuller have not provided Plaintiffs their interrogatories *UNDER OATH* as required by the Federal Rules of Civil Procedure, nor have they complied with discovery requests. Plaintiffs wonder what the Defendants have to hide in that they have continued in their custom of non-compliance with discovery requests.

1. Have Defendants East Lycoming School District and Robin Schuller violated Plaintiffs First Amendment Rights?

16. In *Jeffery v. O'Donnell,* the Middle District stated "parents have a constitutional right to direct and control the upbringing and development of their minor children," *Jeffery v. O'Donnell,* 702 F.Supp 513, 515 (1988). Plaintiff have not now nor ever waived their parental rights.

The Middle District further stated that ". . . when First Amendment rights are effected by the enforcement of a statute, a state law will be held to a higher standard of specificity than might be the case if purely economic regulation was at issue." *Jeffrey v. O'Donnell,* 702 F. Supp 519.

17. Plaintiff were charged with alleged violations of 24 P.S. 1327, specifically Compulsory School Attendance. Section 1327 states that ". . . every child of compulsory school age having a *legal residence* in this Commonwealth, as provided in this article, . . is required to attend a day school in which subjects and activities prescribed by the State Board of Education are taught in the

English Language . ." **[see Plaintiffs attached exhibit "A"]** (A) Plaintiffs children are not now nor have they ever been "legal residents" of the body politic known as the "Commonwealth". Therefore, this section of the Act does not apply to Plaintiffs or their children.

(B) Even if Plaintiffs and their children were residents of the Commonwealth, they cannot be held liable for violations of the Pennsylvania School Code, including but not limited to Section 1327. **[see Plaintiffs attached Declaration Under Penalty of Perjury, exhibit "AZ"]**

45 P.S. §1102, provides for the Promulgation of Regulations and Format of Documents. State agencies have an obligation to promulgate, amend or repeal any administrative regulation, as well as stating the authority under which the regulation is to be promulgated. 45 P.S. §1206, specifies that All regulations expressly indicate its statutory authority. 45 P.S. §1208, specifies that all unfiled regulations are invalid. **[see Plaintiffs' attached exhibit "AY"]**

The statutory authorities listed in Purdon's Statutory References for 24 P.S. 1327 are: Title 22, Chapters 7, 11, 14, and 51. Chapter 7 deals with Home School Visitors; Chapter 11 contains General Provisions regarding enrollment in Public Schools; Chapter 14 deals with Parental Placement in Private Schools, and Chapter 51 deals with regulated public schools following statutory guidelines.

Nowhere in any of the aforementioned regulations is there any statement or provision for children taught in the home by their parents.

(C) Plaintiffs cannot be held liable for 24 P.S. §1327 or its implemented regulations.

"An individual cannot be prosecuted for violating the Act unless he violates an implementing regulation." *United States v. Reinis,* 794 F2d 506, 508 (9th Cir 1986).

18. Since a State law and its regulations are "held to a higher standard of specificity", Plaintiffs have shown that the aforementioned statute and regulations do not apply to them, and that they have not violated any State law or regulations. Defendants Robin Schuller and East Lycoming School District interfered with and violated their deeply held spiritual convictions as well as their Parental Rights and Obligations secured by the First Amendment and as outlined in the Hold Scriptures which is confirmed and secured by Public Law 97-280, Year of the Bible and Public Law 101-209, wherein the President and Congress of the United States declared that we have an obligation to read and apply the teachings of the Holy Scriptures.

19. 24 P.S. §1354 makes no provisions for criminal complaints against children, parents, or guardians. 24 P.S. §1354 has to date never been filed or promulgated with the Legislative Reference Bureau. There are no promulgated and implemented regulations for 24 P.S. §1354 and therefore it is invalid pursuant to Pennsylvania law. There are no provisions for penalties against school district employees as Defendants allege.

Plaintiffs have shown that the compulsory attendance provisions have interfered with their constitutional guarantees and the enforcement actions of the Defendants have violated their First Amendment rights as outlined herein.

Defendants are *NOT* entitled to Summary Judgment.

2. Have Defendants Schuller and East Lycoming School District violated Plaintiffs' rights to due process?

Plaintiffs have and will demonstrate that the Defendants have deprived them of rights and privileges secured by the Constitution of the United States.

20. Defendants violated Plaintiffs rights to have access to information which is protected by the First Amendment. *Virginia State Board of Pharmacy v. Virginia Citizens Consumers Council, Inc.*, (1976) 425 US 748, 48 L.Ed 2d 346, 96 S Ct 1817.

During the September 23 and 26, 1994 meetings, and upon written requests under the Pennsylvania "Right to Know Laws", Plaintiffs were denied access to public information such as the administrative complaint filed against them with the School district, as well as copies of all statutes, rules, and regulations the Defendants believed Plaintiffs had violated. The Defendants failed to rebut any and all presumptions as well.

Plaintiffs have a First Amendment right to access of information and this right is protectable under Title 42, §1983 against those acting under color of law. *Goodwin v. Cross County School District*, (1973, ED Ar,) 349 F Supp 417.

21. Defendants, *under color of State law*, violated Plaintiffs right to due process.

(A) Without probable cause, Defendant Schuller, upon the recommendation of the Defendant District, filed a private criminal complaint against Plaintiffs. Defendants did not know whether or not Plaintiffs had children or even if they had violated compulsory attendance laws. [see attached exhibit "AW" - Jane Dewire, N.T. p. 7]. Plaintiffs never received a "Notice of Violation" as prescribed by the Pennsylvania School Code, nor were they

afforded an administrative hearing. (B) Defendants violated State Law and Pennsylvania Rules of Court - Criminal, Rule 133, by not submitting the private criminal complaint to the District Attorney's office and thereby violating Plaintiffs procedural due process rights. (C) On the face of the complaint filed by Defendant Schuller, she asked that a warrant be issued for the Plaintiffs and that they be brought in to answer for same. As already admitted by Jane Dewire, Defendants were *without probable cause* and did cause arrest warrants to be issued for Plaintiffs resulting in duress, coercion, and mental anguish. (D) Plaintiffs were never served a summons or complaint as outlined in the Pennsylvania Rules of Court - Criminal Procedure, and were never given the opportunity to answer such summons/complaint. (E) Plaintiffs were never given the opportunity to face their accuser. (F) In violation of Pennsylvania's Sunshine Law, Plaintiffs were never given notice that they were discussed in executive session and given the opportunity to rebut any allegations. [see Plaintiffs attached exhibit "AW" - Jane Dewire, N.T. p. 12, 14, and 15] (G) Defendants refused to comply with discovery requests in cases NT-0000619-94 and NT-0000620-94 (see attached interrogatories marked Plaintiffs exhibit "BA"; Plaintiffs were told there was no provision for discovery in criminal cases. (see Plaintiffs previously attached exhibit "AG". To date, Defendants continue to refuse to comply with Plaintiffs discovery requests IN THIS INSTANT ACTION.

22. Defendants argue *Monell v. New York City, Dept. of Social Services,* that "a local government may not be sued under §1983 for an injury solely by its employees". *Monell,* Id 436 US 658, 691-695, 98 S.Ct. 2018 (1978).

Plaintiffs are suing both Defendant Schuller AND the East Lycoming School District for their actions under

color of law that resulted in Plaintiffs damages. It was Defendant District that discussed Plaintiffs in executive session in violation of the Sunshine Law. It was Defendant District that conducted a vote/consensus to prosecute Plaintiffs as has been shown herein. It was Defendant District that Directed Principal Robin Schuller to meet with Plaintiffs to discuss "compliance", but Robin Schuller admittedly stated she did not have the "authority" to settle issues surrounding school attendance. It was Defendant District that directed Defendant Schuller to file a private criminal complaint against Plaintiffs, without probable cause and violating Plaintiffs rights to due process. It was Superintendent Harrington who told Defendant Schuller not to answer Plaintiffs' questions or correspondence.

By the Language of Defendants' brief, the East Lycoming School District would have the Plaintiffs and this Court believe that Defendant Schuller acted alone; it is apparent that Defendant District would have Schuller the proverbial "sacrificial scapegoat". The actions of both Defendants are so intertwined that it is impossible to separate them.

"Municipalities are persons to whom (Title 42) §1983 applies." *Monell v. Department of Social Services,* (1978) 436 US 658, 56 L.Ed. 2d 611, 98 S.Ct. 2018. The conduct of the East Lycoming School District has caused and subjected Plaintiffs to denials of constitutionally secured rights. Said causation is a "natural consequence" of the municipality's policy. *Smith v. Ambrogio,* (1978, DC Conn) 456 F.Supp 1130, 1135. This policy need not be written, but has been shown to be a pattern of persistent practices sufficiently known to and approved by the East Lycoming School District, its officers and members which constitutes a "custom" of authoritativeness. *Muz-*

quiz v. San Antonio, (1978, CA5 Tex) F2d 529; *Smith v. Ambrigio,* Id.

3. Are there undisputable facts, and do they establish that Defendants Schuller has qualified immunity"?

The conduct of Defendant Schuller violated "clearly established constitutional rights of which a reasonable person would have known" and therefore she is without any qualified immunity. *Harlow v. Fitzgerald,* 457 U.S. 800, 818, 102 S Ct 2727, 2738 (1982)

Defendant Schuller stated in her testimony that she would "need all of the laws of the State" in order to determine whether enrollment is necessary for attendance to be required. **[see attached exhibit "AP", Robin Schuller, N.T. p. 11]** She also admitted that she never received any written documentation of any violations. **[see attached exhibit "AP" Robin Schuller, N.T. p. 14].** Defendant Schuller relied upon her own personal knowledge of school attendance, policy, the School Code, and conversations with Superintendent Harrington. **[attached exhibit "AP", Robin Schuller, N.T. 17]** Defendant Schuller could and should have known that without personal knowledge or written documentation of violations, it is NOT reasonable to file criminal complaints against a child, parent, or guardian. Based upon her own lack of knowledge, she should and could have known that any issues concerning violations should have been handled by the School Districts' attorney.

24. Public officials do not have immunity simply because she operates in a discretionary situation. It is indicated that public servants are to be held liable when they abuse their discretion or acted in a way that is arbitrary, fanciful, or clearly unreasonable. *Littleton v. Berbling,* (1972, CA 7 Ill) 468 F.2d 389. Employees of municipalities are not immune from suit under statutes relat-

ing civil rights for deprivations of rights on the ground that they were acting within the scope of their responsibilities of performing a discretionary act. *Bunch v. Barnett,* 376 F.Supp 23. "Public officials are not immune from suit when they allegedly violate the civil rights of citizens . . the defense of immunity is to be sparingly applied in these kinds of cases." *James v. Ogilvie,* (1970 ND Ill) 310 F.Supp 661, 663.

Therefore, Defendant Schuller does *NOT* have qualified immunity.

Respectfully submitted,

/s/ Scott & Brenda Lawvere
/s/ Ambassadors for Christ

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[Certificate Of Service Omitted In Printing]

APPENDIX F

[Filed Mar 19 1997]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

No. 4:CV-95-1515
Complaint Filed 9/8/95
(Judge Muir)

MR. AND MRS. SCOTT LAWVERE,
Plaintiffs

v.

THE EAST LYCOMING SCHOOL DISTRICT, et al.,
Defendants

ORDER
March 19, 1997

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On January 29, 1997, we issued an order in which we granted the remaining Defendants' motion for summary judgment and directed that the file in this case be closed. On February 13, 1997, Plaintiffs Scott and Brenda Lawvere filed a "motion for rehearing" of our order of January 29, 1997, and a brief in support thereof. We will construe the Lawveres' motion as a motion for reconsideration under Fed.R.Civ.P. 60(b). On February 24, 1997, Defendants East Lycoming School District and Robin

Schuller filed a brief in opposition to the Lawveres' motion. On March 3, 1997, the Defendant referred to in the Lawveres' complaint as the "Pennsylvania State Constables" filed a separate brief in opposition. On March 11, 1997, The Lawveres filed a motion to strike the opposing brief of Schuller and the East Lycoming School District. The Lawveres filed a brief in support of their motion to strike on the same date. On March 18, 1997, the Lawveres filed a reply brief with respect to their motion for reconsideration. The motion for reconsideration is ripe for disposition.

A motion for reconsideration is a device of limited utility. It may be used only to seek remediation of manifest errors of law or fact or to present newly discovered evidence which, if discovered previously, might have affected the Court's decision. Harasco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985). A motion for reconsideration must rely on at least one of three grounds: (1) an intervening change in controlling law; (2) the availability of evidence not previously available; or (3) the need to correct a clear error of law or prevent manifest injustice. McDowell Oil Service v. Interstate Fire & Casualty, 817 F. Supp. 538, 541 (M.D. Pa. 1993) (McClure, J.). In *McDowell,* the Court stated that a motion for reconsideration ". . . is not to be used as a means 'to reargue matters already argued and disposed of' by prior rulings 'or to put forward additional arguments which it could have made but neglected to make before judgment.' " *McDowell,* 817 F. Supp. at 541 (citations omitted).

In their motion for reconsideration, the Lawveres merely restate arguments which they set forth in their brief in opposition to the Defendants' motion for summary judgment and which we rejected in our order of

January 29, 1997. This restatement of arguments already considered by the Court is improper. *McDowell*, 817 F. Supp. at 541.

The Lawveres do not present either an intervening change in the controlling law or new evidence not previously available as grounds for their motion for reconsideration. We have thoroughly reviewed our order of January 29, 1997, and we are convinced that we did not make an error of law. Consequently, we will deny the Lawveres' motion for reconsideration.

We will now address the Lawveres' motion to strike the opposing brief of Schuller and the East Lycoming School District. In their motion, the Lawveres take issue with various factual assertions contained in the opposing brief and again attempt to reargue the propriety of our grant of summary judgment. Construed in the light most favorable to the Lawveres, the assertions in the motion to strike have no bearing on the merits of their motion for reconsideration. We will deny the motion to strike.

NOW, THEREFORE, IT IS ORDERED THAT:

1. The Lawveres' motion for reconsideration filed February 13, 1997, is denied.

2. The Lawveres' motion, filed March 11, 1997, to strike the opposing brief of Schuller and the East Lycoming School District is denied.

/s/ Malcolm Muir, Sr.
MUIR, U.S. District Judge

MM:jt